(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

APPEAL FROM ORDER NO. 14 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri A. D. Bhobe, advocate for the appellants.

Shri A. F. Diniz, advocate for the respondent nos. 1 and 2.

CORAM : S. A. BOBDE, J.

DATE : 11th June, 2004

P.C.:

After hearing the matter for sometime, it is clear that the learned trial court has granted the injunction against the appellants on finding that there is no prima facie right in the defendants to use the property of the plaintiffs as a motorable way. The trial Court has also found that the affidavits to the effect that there was such a motorable right, as not worthy of much credit. In fact, the trial court has adverted to the absence of a village plan which would have shown such a right, had it existed. Hence, I am not inclined to

entertain this Appeal.

2. Shri Bhobe, learned counsel for the appellants however, submitted that the disputed way is the only motorable access which the appellants have to their property. This statement is strongly disputed by Shri Diniz, learned counsel appearing for the respondents, who asserts that there is a motorable way through the property under survey no.13/1. Having regard to this dispute, I am of the view that it would be in the interests of justice to allow the appellants to apply for appointment of a Court Commissioner before the trial court, for ascertaining whether the disputed way is the only motorable access of the appellants to their own property. On the basis of the report, the appellants shall be at liberty to apply for permission to use the motorable way pending decision of the suit. The trial court will decide such an

application on its own merits without being influenced by any observations made by this Court. The suit is directed to be decided expeditiously.

3. Appeal From Order disposed of in the above terms.

S. A. BOBDE, J.

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